CONNECTICUT GENERAL ASSEMBLY

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**Raised Bill No. 138**

**An Act Concerning Motions for Summary Judgment in Juvenile Court Matters**

Committee on Human Services

REMARKS OF ATTY. MICHAEL H. AGRANOFF

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Thank you for the opportunity to testify. I have been a DCF defense lawyer since 1991. At present, ours is the only law firm in the State of Connecticut providing full-service DCF defense to private-paying adults on a full-time basis.

Our office drafted this bill, which was modified by the Committee on Human Services, to correct what is either an oversight or an injustice in the Connecticut Practice Book. The problem is that, at present, there is no effective way for parents or children to dismiss a case that should never have been brought. Therefore, parents often have to plead to charges that they were not

responsible for, in order to avoid months of aggravation and thousands of dollars in legal fees. They simply have no way to get baseless charges dropped.

In criminal and civil (non-juvenile) cases, there are methods for dismissing cases that have no merit.

In a criminal case, the defendant may file a motion to dismiss on the grounds of insufficiency of evidence to justify placing the defendant on trial. This motion, if granted, will end a meritless case as quickly and inexpensively as possible.

In civil (non-juvenile) cases, a motion for summary judgment (MSJ) is a common method to dispose of a case without a trial. Normally after discovery commences, either side may file the MSJ, claiming that there is no disputed issue of material fact, and that it is entitled to judgment as a matter of law. The MSJ, if granted, will end a case as quickly and inexpensively as possible.

However, today, for juvenile cases, there is no MSJ. If DCF files a petition in Juvenile Court, all it must do is to *assert* that there is child abuse or neglect. Even if subsequently-developed evidence clearly shows that the case is without merit, unless DCF agrees to withdraw the petition, there is no way to end the matter short of a contested trial. Many parents do not have the time or energy for this, and often end up pleading to charges they are not responsible for, just to get it over with.

A meritless case can be ended by the Judge before trial, whether civil or criminal. But not a Juvenile case; and there is no logical reason for that.

**The bill proposed does not contribute in any way to child abuse or neglect. It simply allows a Judge to dispose of the petition, without trial, if there is no genuine issue as to any material fact, and if the moving party is entitled to judgment as a matter of law.**

**I respectfully suggest that the bill as drafted be modified slightly, as follows:**

1. In subsection (b) of the bill, the word "party" is used four times. That word should be changed to "respondent party." The reason is to specify that the petitioner, which is normally DCF, cannot itself move for summary judgment. The words "parties" and "party's", as appear in subsection (b) of the bill, may remain as they are.

2. Also in subsection (b) of the bill, the word "hearing" should be changed to "trial on the merits." The intent is that filing an MSJ after the case has been assigned for trial requires Court permission. The word "hearing" could be construed to mean any standard short-calendar hearing, such as a motion for visitation, motion for a psychological evaluation, or motion for disclosure of records. Such motions, in and of themselves, should not influence the filing of an MSJ.

The bill parallels the current summary judgment provisions for civil cases. Documentary evidence is required, and all sides may be heard, before a decision is rendered. However, recognizing the severe sanctions of the Juvenile Court, including termination of parental rights, the bill prohibits DCF itself from abrogating the parents' right to a contested trial.

The only possible objection that DCF might conceivably have is that it needs more time to develop its evidence. However, this objection is not reasonable. DCF should have its basic evidence when it filed the petition.

What often happens in actual practice is that DCF suspects neglect, files a petition, and then spends months to develop evidence from psychological evaluations, service providers that it selects, additional social worker home visits, and the like. DCF has customarily conducted this judicial fishing expedition because no lawyers have objected; until now.

It is time to give parents, or even a child, the right to have a petition dismissed if it has no merit. DCF should not be allowed to use the courts as an extension of its investigative powers.

However, in extreme cases, Section (g)(2) of the bill allows the court to grant a continuance, in order to allow another party time to obtain affidavits or other evidence. Further, Section (g)(3) of the bill permits sanctions for an MSJ filed in bad faith, which will serve to discourage such conduct.

The case that made this clear to me was the case of Matthew H. However, there are many similar cases. What happened in Matthew H. was the following:

1. Matthew, one of four children in a proper middle-class household, was disciplined by his father for being extremely disrespectful one day. His father paddled him on the buttocks, but Matthew tried to block the paddle with his hand, thus sustaining a bruise on his wrist.

2. A teacher saw the bruise the next day. DCF was called, and an investigation was properly begun.

3. The DCF investigator was lazy. She disregarded the *Lovan C.* decision, which allows reasonable physical discipline. She failed to investigate the family dynamics, the school records, the pediatrician, or the family itself. As a result, she substantiated the father for physical neglect of Matthew.

4. The father called me. We filed an appeal of the substantiation. The substantiation was reversed easily after a hearing. DCF simply had no case. I am pleased to note that the family is doing quite well, and all the children are law-abiding and productive citizens.

5. However, **while the substantiation appeal was pending,** the DCF treatment social worker insisted that the family undergo certain services, such as family counseling and parenting education. The family objected, on the grounds that this was not needed, and in any event the substantiation was being appealed. If they lost, they would accept the services.

6. DCF retaliated against the family by **filing neglect petitions involving both parents and all four children.** It was hard to understand, let alone explain to bright non-lawyers.

7. I tried everything that I could to get DCF to withdraw the petition. Even the children's lawyer was on our side. However, DCF would not budge.

8. Since there was no MSJ allowed, I filed a motion to dismiss, which was procedurally less viable. The Judge was sympathetic, but denied the motion. The Judge stated, correctly, that the allegations of the petition, if proven, *could* support an adjudication of neglect. And indeed they could, except that the available evidence easily showed that the allegations could not be proven. Nevertheless, no evidence could be presented at a motion to dismiss, and we would have to go to trial, since DCF was unwilling to dismiss the petitions voluntarily.

9. At this point, the parents had had enough. Already drained by the substantiation appeal, they lacked the money and energy for several more months of this process. They pled "nolo contendere", and all four children were adjudicated neglected.

10. The court ordered six months of protective supervision. Three months later, we came back to court for an in-court review. I asked that protective supervision end early, then and there. The children's lawyer supported our position. DCF, through the Assistant Attorney General, argued that protective supervision should continue for the three more months as scheduled. The Judge, after hearing the evidence and reviewing documents, summarily ended

protective supervision that very day; without bothering to dignify DCF's plea with a reason for its denial. Fortunately, DCF did not waste yet more taxpayer money by appealing that decision.

11. Among the evidentiary claims that the Judge heard was this: during the protective supervision, the parents had gone to two sessions of family counseling. The counselor had told them to not come back, as there was no reason for the sessions.

As noted, an early MSJ would have allowed the petitions to be dismissed early. Time and money would have been saved, and the parents would not have been stigmatized with adjudications of neglect regarding their children.

As was seen, the parents were correct: they did not need services. The waste of State money engendered by this case was frightful, and of course yields less money for combating actual cases of child abuse and neglect.

There are, of course, similar cases in which a Juvenile Court MSJ is warranted. The problem comes to this: DCF occasionally files a Juvenile Court petition which is baseless and vindictive. But the parents must suffer through months of agony and thousands of dollars to get rid of such petitions. The Juvenile MSJ would provide justice to parents in the cases in which DCF files such petitions, and would not at all affect the majority of petitions which should be heard to full court disposition.

An easier way to state it is this: there is no reason why Juvenile Court actions should not be subject to the same summary judgment procedures as are other civil actions; and as even criminal actions are effectively subjected to via motions to dismiss.

DCF had noted, as a possible objection, that summary judgments are dealt with through Practice Book rules. This bill, which would take effect on October 1, 2010, allows ample time for Judicial to promulgate these rules. That should not be a problem, as the proposed Juvenile rules nearly mirror the current civil rules. There is no logical reason why Juvenile Court summary judgment may not be mandated by statute.

Respectfully Submitted,

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